**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 567 OF 2006**

Vijayalaxmi Jagdish. ...Applicant
V/S.
State of Maharashtra. ...Respondent

S/Shri S.M. Kazi with Anoop Sharma for Applicant.
Shri Y.S. Shinde, APP for the State.

**CORAM : V.M. KANADE, J.**

**DATED : MARCH 2, 2006**

**P.C. :-**

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested in connection with an offence punishable under Sections 406 and 420 of the IPC, on 3rd October, 2005. The applicant is working as an employee of the International Airport Authority. It is alleged that the applicant alongwith other accused hatched conspiracy to give false assurance to unemployed youth that the applicant and other accused would provide them jobs at the Airport, Mumbai. Accordingly, the huge amount was collected by accused no.1 through Sartape and complainant and other people were called at a particular

place and a farce was created in holding in interviews in which applicant took an active part and posed to be an official of the Airport Authority and promised to give jobs to the complaint and others. The total amount of Rs.40-50 lakhs were collected in this manner. Since the jobs were not made available, the complaints were filed.

2. Applicant no.1 has been released on bail by this Court (Coram : S.C. Dharmadhikari, J.) by order dated 19th December, 2005 primarily on account of age of the accused no.1. The Sessions Court granted bail to the present applicant on condition of execution of P.R. Bond of Rs.1 lakh and surety in the like amount. She was also directed to deposit Rs.10 lakhs in the trial Court. It is observed by the Sessions Court if the said amount is not deposited by the applicant, she would not be entitled to be released on bail. The applicant is seeking modification of the relaxation of the aforesaid condition. The applicant, therefore, seeking is reduction of the amount of Rs.1 lakh as also the condition of depositing of Rs.10 lakhs.

3. Learned Counsel for the applicant submitted that she has not received any amount as none of the witnesses have stated that the applicant has received the cash. However, learned APP has invited my attention to the order passed by the Sessions court in which it is recorded that the applicant has received Rs.23 lakhs which is evident from the statement of co-accused. Learned Counsel for the applicant submits that imposing of such condition practically amounted to denial of bail as the applicant, in the circumstances, would not be in a position to deposit such a huge deposit amount in the Court. He submitted that the applicant is a lady having minor children and chargesheet having been filed, there is no possibility of tampering with the evidence.

4. Learned APP, on the other hand, has relied upon the Judgment of **Allahabad High Court, 1990 CRI.L.J. 912 in the case of Ganesh Babo Gupta V/s. State of Uttar Pradesh.** He has submitted that in the said case, the Allahabad High Court has observed that Supreme Court in an identical case had directed the accused to give bank

guarantee in the tune of Rs.1.5 lakhs. He invited my attention to the observation made by the Allahabad High Court, in para 11 of the said judgment wherein the High Court has observed that in cases there is an embezzlement of public money, it was duty of the Court to ensure that the said money is secured though the accused.

5. I have given my anxious consideration to the submissions made by the learned Counsel for the applicant and learned APP for the State. In the present case, the Sessions Court after having considered the submissions of the applicant and the public prosecutor, came to the conclusion that applicant was entitled to be released on bail. However, since there was embezzlement of huge amount of Rs.40-50 lakhs, the Court imposed the condition of depositing of Rs.10 lakhs by the applicant in the Court. In my humble view, such a condition cannot be imposed by the Court as a condition precedent for grant of bail. The Court has arrived at a definite conclusion as to whether the applicant is entitled to be released on bail or not. If it comes to the conclusion

that bail should be granted to the applicant, then it cannot impose a condition which is not likely to be performed or is impossible to perform. Neither the provisions of Section 441 or 445 of the Cr.P.C. permit the Court to impose such an additional condition as a condition precedent for grant of bail. In the present case, the chargesheet has been filed. The applicant is a lady. Section 437 of the Cr.P.C. itself makes an exception in respect of women and children and the Court has to take into consideration this additional factor in the case of such category of people. The statue itself having carved out an exception in the case of women that would be additional factor which the Court has to consider while considering the grant of bail. In my view, imposing of condition of depositing Rs.10 lakhs practically amounts to denial of bail to the applicant. There is no possibility of the applicant absconding or tampering with the witnesses.

6. Under these circumstances, the order passed by the Sessions Court is modified. The amount of bail is reduced from Rs.1 lakh to Rs.10,000/- and the condition

of depositing of Rs.10 lakhs is cancelled. The order is modified, accordingly.

7. In the result, the applicant be released on bail in the sum of Rs.10,000/- with one or two sureties in the like amount. The applicant shall report to the concerned police station i.e. Chaturshrungi Police Sation, Pune, once in a month.

. The application is disposed of.

**(V.M. Kanade, J.)**